

Jack Pile Mine

Consuetation w/  
Laguna Fidee  
Site Assessment  
(NPL listing)



657981

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OPTIONAL FORM 41 (Rev. 1-94)  
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Meeting with Laguna  
5-11-10

Gov. Richard L. Garbie  
Stephen Harper, EPA  
Richard Luarkze, POL

Wren Stenger, EPA - Superfund

Adam Pinger, POL Natural Resources

Jim Hooper POL-COO

Ray P. Lucero, Dir- Dept. Public Works, Pueblo of Laguna

Wren Zehner EPA Superfund removal

LaDonna Turner EPA Superfund

- Consultation continues
- meet & greet new governor
- Jack Rice Status for NPL, timeline
- Structural Assessment & indoor air

5/11/2011

## Follow-up Consultation w/ Laguna Pueblo

New Governor Richard Lucarkie

Previous mtgs w/ Gov. Antonio, Frank Cerno, Jim  
Barbara, June, Amy, Marvin, Curtis Hooper

EPA - Warren Zehner, Steve Harper, LaDonna Turner  
(Jon Rinehart absent)

### History

- 1984 Indian Policy - "tribal concerns considered whenever EPA actions may affect tribe"
- May 1994 - "government-to-government" relations
- Sept 2004 - Reg 6 policy on Sharing Information w/ Tribal Gov.
- Nov 2006 - Consulting w/ Tribal Gov. at Superfund Sites
- Nov 2009 - Pres. Memo to develop implementation plan for EO 13175 for "meaningful and timely" input
- May 20, 2011 - EPA Policy on Consultation + Coordination w/ Indian Tribes

### Laguna

- 2007-2008 - Superfund was learning about Grants Mineral Belt <sup>historic Ur Mining in</sup>
- April 2009 - Stakeholder mtg on Grants Mineral Belt
- ~~1st Consult~~ <sup>Paguate, Mesita, Laguna</sup>
- Sept 2009 - 1st Consultation on Jack Pile Mine + Surrounding Villages
- Oct 2009 - 2nd Consultation (w/ Sam Coleman)
- March 2010 - A.L. Armendarez mtg w/ Gov. Antonio & toured site
- Feb 2010 - Tribal resolution for listing Jack Pile Mine
- June 2010 - Continued assessment work on Puella
- ~~Aug~~ <sup>MOU w/ EPA</sup> June 2010 - Issued 5yr Plan for Grants Mineral Belt
- April 2010 - Completed sampling for Expanded Site Assessment
- March - Sept 2011 - 4 other mines <sup>on Puella</sup>, we are doing Prescreen Assessments now (Oak Creek Canyon, Crackpot, Sanders, & Paisano Mines)

## Jackpile Mine - Ladonna Turner

- EST completed April 2011
- review data w/ tribe June - July
- review draft EST Report w/ tribe + finalize
- prepare HRS
- prepare NPL forms

## Structure Assessment - Warren Ziegner

- Oct 2009 - Aspect fly-over
- elevated [C] in some villages + ~~the~~ mining area
- proceeded to villages to assess Pagnate, Mesita, Lagura, others
- 2-phase assessment

Phase 1 - exterior gamma radiation + soil  
 samples of Ur + (due to IHS urine samples showed Ur)

Phase 2 - interior gamma, alpha, of homes - pressurized ion chamber door-to-door in every village + traditional houses.

- All data in, some houses need mitigation

will notify folks of their indoor data.  
 assess what we can do, present to Council June - July 2011

Saturday

Jim Hooper suggested July 30, 2011.

3

Community Involvement Plan - Steve Harper

- lists contacts

Status and Summary of Schedule  
Jackpile Mine, NM  
May 11, 2011

- January 2011 – Draft conceptual site model for the hydro-chemical process at the Jackpile Uranium Mine site was submitted to the technical workgroup for review and comment. Participants of the technical workgroup include EPA SAM, EPA NPL Coordinator, EPA START contractor, Laguna Environmental staff, Laguna Mine Reclamation, OA Systems Corp. (Contractor for Laguna Pueblo), DOI, Rick Newell (Contractor for DOI), BIA, BLM and USGS.
- February 16, 2011 - Meeting at the Laguna Environmental Office with the Jackpile technical workgroup to discuss/review the draft conceptual site model and start discussing the sampling event for the Expanded Site Inspection (ESI) scheduled for April.
- March 23, 2011- Draft ESI Quality Assurance Sampling Plan sent to the Jackpile technical workgroup for comment. Follow-up conference calls were held on April 1 and 5, to address concerns about the plan.
- April 18-22, 2011 – Sampling event for the ESI conducted.

**Next steps:**

August 2011 – ESI Report and updated HRS package

September 2011 – Site added to NPL queue, if eligible, for March 2012 listing.

**Meeting on May 11, 2011**  
**Governor Richard Luarkie, Sr.**  
**Laguna Pueblo, New Mexico**

### **Jackpile-Paguate Uranium Mine**

#### **History**

The Jackpile-Paguate Uranium Mine is located near the village of Paguate on the Laguna Pueblo, which is approximately 50 miles west of Albuquerque, NM. The mine was operated by Ananconda Mining co. from 1953 to 1982. The site contains approximately 2,656 acres of disturbed land which consists of three open pits and nine underground mines. During the 29 years of mining, approximately 400 million tons of earth was moved within the mine area, and about 25 million tons of ore was removed. Reclamation worked began in December 1989 and completion was in December 1995. Long term monitoring began in January 1996 and continued until December 2006 (10 years of monitoring).

#### **Background**

- Governor of Laguna Pueblo and Laguna Pueblo Council requested Jackpile-Paguate Uranium Mine be placed on the National Priorities List.
- Formal Consultation was held with the Laguna Pueblo and Governor and Council on October 13, 2009.
- A Memorandum of Understanding (MOU) was negotiated with the Laguna Pueblo and formally signed on June 22, 2010.
- The Superfund Removal Program began structure surveys and radon testing.
- The Superfund Site Assessment Program conducted a Preliminary Assessment in April 2010; a Site Inspection in March 2010; and an Expanded Site Inspection in April 2011.

#### **Current**

- Awaiting sampling results from April 2011 Expanded Site Inspection.



# SITE CHRONOLOGY

## **Jackpile Mine - Site Chronology**

March 17, 2009 – Invitation letter sent to Laguna Pueblo Governor Antonio, regarding Grants Mining District Partnership Meeting to be held on April 7, 2009.

April 7, 2009 – Partnership mtg w/feds, state & tribes in Albuquerque to develop holistic approach for the Grants Mineral Belt and 5 yr plan.

Sept 8, 2009 - Letter to Laguna Pueblo Governor Antonio confirming meeting date for September 24, 2009.

Sept 24, 2009 – EPA Superfund mtg w/Pueblo of Laguna to discuss concerns, potential NPL listing, and consultation.

Oct 1-14, 2009 – EPA conducts flyover to measure uranium ground concentrations

Oct 13, 2009 – EPA Superfund began formal consultation with the Pueblo of Laguna.

Jan 2010 – EPA and Laguna begin drafting MOU for Superfund's assessment and removal activities

Feb 16, 2010 – EPA discusses flyover results w/Governor of Laguna

Feb 17-18, 2010 –EPA and Pueblo of Laguna perform site recon for site assessment sampling.

Mar 1, 2010 – EPA collected samples at the Jack Pile Mine.

Mar 9, 2010 – EPA mtg w/Governor of Laguna w/radiation experts to answer questions about flyover results

Mar 29, 2010 – EPA sent letter to Stephen Spencer with DOI documenting meeting regarding the Jackpile Mine site and possible listing on the NPL.

April 22, 2010 – EPA mtg w/Laguna 9:00 am. to discuss GMD 5 Year Plan and met evening w/SNEEJ, MASE and BVWA to discuss GMD 5 Year Plan

April 2010 – Evaluated the Jackpile mine sampling results.

June 9 – EPA staff mtg w/Pueblo of Laguna environmental staff to discuss the draft PA report for Jackpile Mine.

June 2010 – develop Hazard Ranking Score for the NPL if the Jackpile Mine meets 28.5

June 22, 2010 – Tribal Consultation process Memorandum of Understanding signed by the Laguna Pueblo

July 16, 2010 – Conference call with Laguna Environmental to discuss concerns about listing and conducting additional investigation

*Aug 2010 - 5 Yr Plan for Grants Mineral Belt*  
September 9, 2010 – Meeting DOI agencies to discuss their involvement in developing the ESI workplan for Jackpile

October 7, 21, 2010 – Conference call with DOI agencies regarding Jackpile

November 3, 18, 2010 – Conference call with DOI agencies regarding Jackpile

November 8, 2010 – Conference call with Laguna Governor Antonio to discuss additional sampling needed at Jackpile and involving DOI in development of ESI workplan

November 9-10, 2010 – Site Assessment and Enforcement conduct file review of documents at Laguna Pueblo

December 7, 2010 – EPA and contractor meet with Laguna Environmental staff and Jackpile reclamation manager to discuss additional sampling needed at Jackpile.

December 8, 2010 – Meet with DOI agencies for update.

December 15, 2010 – Briefing with Wren on Jackpile status.

December 20, 2010 – Conference call with DOI agencies. Sue, with the NM Solicitors Office, states that they had a meeting with the Laguna Pueblo and the Pueblo has hired a company to complete the ROD requirements, installed a network of groundwater wells, fencing and address the gaps in the ROD. 1.2 million was left in the trust account and they were going to close out the old 638 agreement and start a new agreement with the funds to dove tail along with the EPA work.

December 21, 2010 – Conference call with Marvin Sarracino and Adam to discuss the gaps in the ROD. Pueblo said that they had a contractor that was addressing the gap and they would provide us a deficiency checklist, 2007-2010 groundwater data, maps of well locations including the 2 new wells, analysis of ponded water and the final report from the contractor in 3 to 4 months.

January 6, 2011 – Conference call with DOI agencies regarding Jackpile. Tentative date for next ESI work group set for February 15/16. The ground water conceptual model will be forwarded to the group when we receive it from Weston.

January 27, 2011 – Conference call with DOI agencies regarding Jackpile. Meeting scheduled for February 16, 2011, at the Laguna Environmental Department with the workgroup. The ground water conceptual site model will be forwarded to everyone prior to the meeting for review. Projected ESI sampling date is the week of March 28. Next conference call scheduled for February 7 at 10:00 am.

February 3, 2011 – Went to a BP office location in Plano, TX, with enforcement officer and OSC Jon Rinehart, to review maps of Jackpile Mine site.

February 7, 2011 – conference call with DOI agencies. Discussed meeting on February 16, at Laguna; coordinating driving/carpooling.

February 14, 2011 – Emailed the draft conceptual site model to the technical working group for review before the meeting on the 16<sup>th</sup>.

February 16, 2011 – Meeting with the technical workgroup at the Laguna Environmental Department. Tour of the Jackpile Mine site was given by Marvin Sarracino. Ben Castellana, with Weston, gave a power point presentation of the conceptual site model. Requested comments from the workgroup on the model. ESI workplan will be developed and emailed out to the workgroup prior to ESI sampling tentatively scheduled for the week of March 28, 2011.

March 23, 2011 – Emailed the technical workgroup to remind them to comment on the conceptual site model and stated that the draft ESI sampling plan would be forwarded soon for review/comment.

March 25, 2011 – ESI sampling event rescheduled for the week of April 18, to allow for additional time to discuss comments made to the ESI sampling plan.

March 29, 2011 – Conference call with technical workgroup to discuss the concerns about the ESI sampling plan and make needed changes.

March 30-31, 2011 – EPA Site Assessment met with Marvin Sarracino and Curtis Francisco to start assessments on three mine sites located on the south side of Laguna Pueblo that were not part of the Jackpile Mine.

April 6, 2011 – Conference call with Jackpile technical workgroup to discuss the ESI sampling plan.

April 12, 2011 – Emailed the revised ESI sampling plan to the technical workgroup with all the agreed upon changes/additions.

April 18, 2011 – ESI sampling event at Jackpile Mine took place with EPA, Weston contractors, Laguna Environmental and Laguna Mine Reclamation Technician.

JACKPILE-PAGUATE MINE  
ANACONDA MINERALS COMPANY  
LAGUNA INDIAN RESERVATION

History

October 1951 - Pueblo of Laguna and Anaconda negotiate prospecting permit for Laguna Indian Reservation

November 1951 - Jackpile outcrop (along Rio Moquino) discovered by aerial radiometric reconnaissance; became Jackpile from "Jack's pile" after J.D. "Jack" Knaebel, General Manager of Anaconda's New Mexico Operations.

December 1951 - exploration drilling begins; delineated orebody suitable for open-pit mining

September 1953 - overburden stripping by private contractor begins; ore shipments from Jackpile begin several months later; ore trucked to Anaconda's Bluewater Mill 8 miles northwest of Grants

1955 - additional exploration drilling had delineated much larger orebody north of Jackpile outcrop and overburden stripping begins

1956 - Bluewater Mill expanded and converted for acid treatment; ore being shipped over new 5 mile rail spur to Santa Fe mainline near Laguna

June 1956 - larger Paguete orebody discovered 2 miles west of Jackpile orebody (presumably named after Laguna village of Paguete); ore production from Paguete began in 1962; Jackpile operations phased out in 1965; during this time, Anaconda also open-pit mined small, satellite Windwhip orebody just west of Jackpile orebody; workings later covered by Jackpile waste dumps

Total open-pit material moved = 395.8 million tons

- 371.6 million tons of overburden, ore associated waste and protore. Ore associated waste is Jackpile Sandstone (ore-bearing formation) that did not contain sufficient uranium mineralization to be protore (low grade ore); protore is Jackpile Sandstone that contained sufficient uranium mineralization to be stockpiled for possible future milling
- 24.2 million tons of ore yielded 83 million pounds of uranium oxide (U<sub>3</sub>O<sub>8</sub>) or yellow cake

Total underground production = 1.5 million tons of ore that yielded 5.7 million pounds U<sub>3</sub>O<sub>8</sub>

Total surface disturbance = 2,656 acres  
Open pits = 1,015 acres (40% of total)  
Waste dumps = 1,266 acres (48% of total)  
Topsoil stockpiles = 32 acres  
Depleted ore stockpiles = 50 acres  
Protore stockpiles = 103 acres  
Buildings, roads, rail spur, misc. = 190 acres

### Leasing

May 1952 - Lease 1, aka Jackpile Lease, issued for about 800 acres; Amended 1954, 1956, 1960 to present 4,988 acres

July 1963 - Lease 4 issued for 9,100 acres; Amended to present 2,560 acres

July 1976 - Lease 8 issued for 320 acres; originally acquired and released as Lease 6

Total leased = 7,868.27 acres

### Geology

Ore bearing formation is Jackpile Sandstone in the upper Brushy Basin Member of the Jurassic Morrison Formation

Orebodies occur as pods with elongated, tabular to irregular outlines. Depths range from surface outcrop to 500-600 feet; thicknesses range from a few inches to as much as 20 feet; lateral dimensions range from a few feet to several thousand feet; some pods are layered or stacked as much as 50 feet thick.

Uranium occurs as coating of the sand grains

Ore grades range from 0.02% to more than 1% U<sub>3</sub>O<sub>8</sub>

Mill shipments averaged 0.19 to 0.21% of U<sub>3</sub>O<sub>8</sub>

### Mining

Four open pits: Jackpile, Windwhip, (covered by Jackpile dumps), North Paguate, South Paguate

Generally, open-pit mining consisted of:

1. Surface drilling to delineate orebodies
2. Stripping overburden to Jackpile Sandstone (drilling and blasting; front—end loaders and trucks)

3. Ripping Jackpile Sandstone with bulldozers
4. Separate removal of ore and ore associated waste with front- end loaders and trucks

Nine underground mines: Woodrow, Alpine Test, H-1, P-10, P-7 (essentially northern extension of P-10), P-9-2, PW-2/3, P-13 (essentially part of P-10) and NJ-45; P-10 was largest; others generally small adit mines into hillsides or highwalls in the open-pits; P-15/17 Mine (south of P-10) never mined and contains majority of remaining ore reserves

Generally, underground mining consisted of:

1. Surface drilling to delineate orebodies
2. Develop main access (shaft or adit) to orebodies
3. Develop (block out) and extract orebodies by conventional, modified room-and-pillar mining; extract ore on retreat from farthest extent of orebodies to main access; overlying strata allowed to cave in when extraction complete

### Mining and Reclamation Plans

Mining began prior to NEPA, 25 CFR 177 and 30 CFR 231; No mining plans for open—pits and early underground mines

With proposal of H-1 Mine in 1972, USGS required mining plans for all new mining operations; All subsequent underground mines covered by environmental assessments (EA's) and approved mining plans

1973 - USGS Conservation Division (December 1981 became MMS, April 1983 onshore functions became part of BLM) requested open-pit mining plan to comply with Federal regulations

February 1977 - Anaconda submits comprehensive mining and reclamation plan for the entire life of all mining operations; EA prepared but no action taken

March 1979 - plan revised (projected mining until 1985) but no action taken

September 1980 - Anaconda decides to cease mining due to poor market conditions and submits first comprehensive reclamation plan; MMS determines that EIS is necessary and begins preparation

August 1981 - Anaconda withdraws plan due to proposed reroute of State Highway 279 through middle of mine area

March 1982 - Anaconda submits modified reclamation plan

February 1985 - BLM and BIA issue DEIS

October 1986 - BLM and BIA issue FEIS

December 1986 – BLM and BIA issue ROD

### Mine Reclamation

December 1986/January 1987 – Anaconda negotiates “buy-out” of reclamation responsibility; all leases are terminated which ends BLM authority; BLM continues to provide technical assistance to the Pueblo of Laguna and BIA

March 1987 – Pueblo of Laguna enters into a 638 contract with BIA to perform the management, coordination and administration of the Jackpile-Paguate Reclamation Project

December 1987 – Jacobs Engineering hired to complete project construction design; BLM assists in TPEC and oversight of Jacobs’ design work

June 1988 – Pueblo of Laguna establishes the Laguna Construction Company whose primary goal is to complete the Jackpile-Paguate Reclamation Project; BLM provided technical assistance

August 1989 – reclamation begins; BLM provided technical assistance in all aspects of the reclamation

March 1990 - BIA and BLM enter into a MOU to authorize BLM to assist in the radiological monitoring programs

December 1995 – reclamation is completed (one year ahead of schedule)

September 2007 – OA Systems Corporation completes Jackpile-Paguate Uranium Mine Record of Decision Compliance Assessment for Pueblo of Laguna



Grants Mineral Belt  
6SF-T Briefing information  
May 10, 2011

- Region 6 led a multi-agency effort to develop a Five Year Plan for the Grants Mining District in August 2010. The plan leverages the resources of 10 federal and State agencies to address the legacy of uranium mining in the northwest area of New Mexico. This area includes 97 former uranium mines and 5 former mills. A district-wide ground water study is a key element to understanding the impacts from the mining to this vital resource for the State. Implementation of the plan requires persistent efforts and on-going resources to understand impacts from anthropogenic effects and to identify needed actions.
- Region 6 is working with the Pueblo of Laguna to complete an investigation this year at the Jackpile Mine for consideration for the National Priorities List. The Pueblo invited EPA to assess this mine, which was once the largest uranium mine in the world. Impacts in nearby surface water have been documented, however, the current investigation is focused on determining if the mine is the source via the groundwater pathway.
- EPA issued a 104(e) Information Request to Atlantic Richfield Company (ARCO) for Jackpile Mine. After several extensions ARCO provided a response to EPA on 3/1/2011. Enforcement is currently reviewing the 40,000+ documents attached to ARCO's 104(e) response.
- Region 6 conducted PRP searches for 96 mines in the Grants Mineral Belt and identified 85 entities, not counting the surface or mineral owners. Enforcement reviewed approximately 26 linear feet of documents from the State of New Mexico Mines and Minerals Division and coordinated with NMED to conduct 41 CERCLIS pre-screens. Work is underway to determine which mines were federally managed. As federal sites are identified, Reg 6 will coordinate referrals to BLM to address.
- Region 6 conducted PRP search and issued general notice to Hecla on April 27, 2011 for the Johnny M Mine. Enforcement expects Hecla will be a viable PRP that can either perform work or pay for Superfund costs.
- Region 6 is working with the US Forest Service on the PRP search for the San Mateo Mine.

*Compile our soil, water, radon levels:*

*EPA vs NRC*

*What about CDC/ATSDR position?*



**OCTOBER 13, 2009**

**LAGUNA PUEBLO**

**CONSULTATION**

Agenda  
EPA Region 6 / Pueblo of Laguna  
Consultation Meeting  
Laguna Pueblo, NM  
October 13, 2009

11:00am – 11:10am	Introductions	Laguna Pueblo EPA Region 6
11:10am – 11:20am	Opening Remarks	Laguna Governor Regional Administrator
11:20am – 12:00pm	EPA Presentation	EPA Superfund Regional Counsel Tribal Affairs Office
	-5 Year Plan -Data Base Development -Preliminary Assessment Site Investigation -Residential Structure Assessments -Memorandum of Understanding	
12:00pm – 12:45pm	Discussions/Questions	All
12:45pm – 12:55	Summery/Follow Up	All
1:00pm	Adjourn	

1169

10/13/09

Laguna Pueblo, Gov. Antonio, Full Tribal Council

Formal Consultation on Uranium mining

1953-1982 - 56 yrs Jockpile Mine operation

respiratory & radiation related cancers

Radiation Exposure Compensation Act

not post 1971 mine, working w/ Udell to extend coverage

Mt Taylor - traditional cultural property designation

resurgence of UR mining & milling

consulted w/ NRC

Laguna passed moratorium of no further UR mining

Reclamation on surface is minimal, erosion, wind

Nutron Energy Corporation visited <sup>Harrison</sup> ~~Harrison~~ (?)  
wanting to reopen mining

Also Boreum for mill cake but the nuclear plant in New Jersey did not proceed.

Maybe we will qualify as a Superfund Site

Laguna  
Arcoma  
Iquim

Sam Said

- Laguna may want a 5 yr plan ~~and~~ similar to Navajo Nation
- EPA organized a mtg last Spring of all stakeholders
- We discussed a Comprehensive database for UR mining. EPA volunteered to build this database.
- Superfund - SA process in NCP sites can be proposed for PASI by State/Tribe. We have initiated PASI for Jack Pile Mine, will work w/ tribe, then develop HRS core.
- overflight of residential areas to identify exposures
- PASI will ~~analyze~~ access Jack pile mine
- Will you do more flyovers later?
- if you get sporadic readings, do you come back?
- ASPECT real time monitoring, so issues/gaps are known before we leave this time. QA/QC done in real time allows us to reply as needed this time. Purpose allows us to concentrate our ground resources as needed + identified by aspect.
- ASPECT gives us Snap Shot, then we mobilize on the ground.
- Is there money available to address high conc<sup>anup</sup>? annual \$10M budget for emergency, we prioritize what is needed.

## Get Jackpile tasked

- Will Laguna data be released publicly?  
yes, but will work w/ tribe on releasing

Village of  
Paguate megita 3,000 people (enrolled members)  
- 300 ft from open pit at Jackpile  
(downstream of Jackpile)

- Need water, air + Superfund, all together
- Health questionnaire recently sent to the tribe. \*  
Call Jim for more information
- Tribe needs to figure out what it wants +  
then tell EPA as part of consultation (Jeff)

Is Jackpile to be listed individually?

We expect so.

\$300M annually for NPL sites if no PRPs to  
remediate.

We also are doing removal assessment for imminent  
endangerment.

Requested funding for EIS @ Jackpile.

Laguna has assessment of ~~reps~~ ROD implementation.

Tribe needs to survey its data → Jim \*  
and get w/ EPA to share it.

- need a timeline
- need contacts
- need milestones
- MOU provided, drafted by EPA

*provided to Tribal Council  
on 10/13/09*

**MEMORANDUM OF UNDERSTANDING**  
**Between the**  
**UNITED STATES ENVIRONMENTAL PROTECTION**  
**AGENCY, REGION SIX**  
**and**  
**PUEBLO OF LAGUNA**

**I. PURPOSE**

This Memorandum of Understanding ("MOU") is entered into between the United States Environmental Protection Agency, Region 6 (the "EPA"), and the Pueblo of Laguna (the "Pueblo") (collectively "the Parties") to facilitate consultation, coordination and cooperation among the Parties regarding plans and activities to assess the impacts of uranium mining and ensure the protection of human health and the environment.

**II. ROLES AND RESPONSIBILITIES**

**A. General Principles and Goals**

The EPA is committed to working with Tribal Nations, including the Pueblo, in a manner consistent with the Presidential Memorandum dated April 29, 1994, 59 Fed. Reg. 22951 (May 4, 1994) ("Government-to-Government Relations With Native American Tribal Governments") and the EPA 1984 Indian Policy. EPA's policy is to act in a manner respectful of each Tribe's status as a sovereign nation and to consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. Region 6 EPA has adopted a Tribal Consultation Policy Statement and Elevation Protocol, hereby incorporated by reference and attached hereto, which provide additional guidance.

The Pueblo of Laguna is a federally recognized Tribe with jurisdiction over lands recognized as Indian country. The Pueblo has authorities under Tribal and federal law which it may, in its discretion, exercise to further the best interests of the Pueblo and Pueblo citizens. The Pueblo determines under Tribal law to whom authorities are delegated within its government and who may represent Pueblo in government-to-government interactions. The Pueblo has determined that an MOU with EPA will facilitate coordination and consultation about activities related to contamination from uranium mining and its impacts on lands, structures, resources and residences of the Pueblo and Pueblo citizens.

The Pueblo and EPA mutually agree that the goals of protecting the environment and protecting

human health are of the utmost importance. The parties intend that the activities and procedures described in this MOU will help achieve these goals for the benefit of the citizens, natural resources, cultural resources, economy and other interests of the Pueblo and others who may be affected by contamination related to uranium mining.

## **B. Scope of Activities**

This MOU is intended to cover activities undertaken by Region 6 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, 42 U.S.C. §§ 9601 et seq.

EPA - The parties acknowledge that EPA's plans include, but are not limited to, the following activities:

- aerial surveys and photos,
- sampling of soils, water and other media within Indian country under Pueblo jurisdiction,
- sampling inside residences of Pueblo citizens,
- interviews of citizens of the Pueblo and community meetings,
- collection/compilation and analysis of data,
- preparation of plans, reports, fact sheets and other documents,
- other activities commonly associated with preliminary assessment and site investigation (PA/SI) work under CERCLA

Pueblo - By this MOU, the Pueblo commits to cooperate with EPA in the above activities and:

- advise EPA about unique concerns that the Pueblo may have,
- facilitate access for the PA/SI and other CERCLA activities on Pueblo lands and in structures owned or managed by the Pueblo,
- assist EPA with gaining necessary access to the land and dwellings of Pueblo citizens for purposes of residential structure assessments,
- comment on plans, reports and other documents,
- share existing environmental data, other documents and important information with EPA

## **C. Consultation and coordination**

To accomplish the goals and activities described in this MOU, the parties agree that it is necessary and appropriate to establish and maintain effective communication through various means which may include, when appropriate, formal consultation between governmental officials, or informal contacts and coordination between Pueblo and EPA staff.

The following specific consultation and coordination activities are contemplated:

1. EPA plans to meet with, present information and consult with the Pueblo's elected officials and



Council in October 2009, as requested by the Pueblo.

2. EPA will coordinate with representatives of the Pueblo to identify appropriate procedures for EPA personnel to follow when visiting the Pueblo under nonemergency circumstances.
3. The Pueblo agrees to advise EPA of any particular locations where access, photography, sampling or other activities may be subject to restrictions.
4. The Pueblo agrees to advise EPA of religious ceremonies or other activities and so that EPA can try to avoid unnecessary disruption of them,
5. The parties agree to establish and keep current a list of appropriate contacts within their respective governments for communication about technical, legal and other issues.
6. The parties agree to follow the Elevation Protocol, whereby staff at EPA and the Pueblo will develop and maintain appropriate lines of communication and issues will be elevated if and when appropriate.
7. EPA agrees to coordinate with the Pueblo concerning meetings with Tribal citizens and Tribal communities so that Pueblo representatives may attend, to the extent practicable.
8. After collection of data, analysis and preparation of draft reports, EPA will provide to the Pueblo a copy of the draft report and allow thirty (30) days for comment prior to finalizing the report, whenever possible.

**D. Information and data sharing**

1. EPA anticipates collecting data from various sources, including but not limited to existing information and new data from the Pueblo, individual Pueblo citizens, other governmental agencies and other sources, and plans to create a database using this information. Some form of this data may ultimately be made available to the public. EPA does not contemplate the collection of data related to the health of individual citizens.
2. The Pueblo will cooperate by providing EPA with information in the Pueblo's possession that is related to past uranium mining and existing contamination, including technical data, leases, agreements, maps and other documents that the parties agree are pertinent. In particular, the Pueblo will assist EPA in acquiring documents and information related to prior efforts to assess or address mining impacts on the Pueblo, including information provided to or received from the Department of Interior Bureau of Indian Affairs (BIA), copies of agreements with potentially responsible parties, and information about past reclamation efforts.

3. The Pueblo will assist EPA in identifying and meeting with elders and other individuals who may have historic information or expert knowledge about uranium mining on the Pueblo, potentially responsible parties or factors related to the resulting contamination of lands, resources, structures and residences on the Pueblo.
4. Pueblo will, as appropriate,
  - a. advise EPA of any information that may be confidential, sensitive or restricted,
  - b. designate any information it deems to be confidential business information as defined in federal regulations,
  - c. redact information prior to submittal to EPA, if the Pueblo determines that it is not pertinent and should not be disseminated to the public review,
  - d. refrain from providing information that would impermissibly disclose religious or culturally sensitive sites
  - e. coordinate with and advise EPA of any issues or questions related to information disclosure or sharing
5. EPA will attempt to accommodate, to the extent possible, the Pueblo's concerns related to the collection, use or release of culturally sensitive or private information, and avoid potential disruption of religious ceremonies or traditional lifeways.
6. Once provided to or otherwise in EPA's possession, the parties acknowledge that information may be subject to public disclosure in accordance with the Freedom of Information Act (5 U.S.C. §552 et seq.), the Privacy Act and other applicable federal laws and policies. EPA will protect private addresses and names, confidential business information, and other information to the extent permissible under federal law, regulations and applicable policy.
7. EPA will follow the "Regional Policy on Sharing Information with States and Tribes" dated September 9, 2004, attached and hereby incorporated by reference.

**E. Specific activities**

1. Aerial survey - Pueblo gives permission for at least one aerial survey. EPA will coordinate with Pueblo representatives regarding potential areas to be added to the survey area. Pueblo will advise EPA of any religious ceremonies or other traditional activities that might be disrupted, and will assist EPA in finding ways to avoid unnecessary disruption of the same.
2. PA/SI - Pueblo agrees that, upon prior notice, EPA will be provided access to Tribal lands and structures as necessary to conduct sampling and other activities typically included in a CERCLA Preliminary Assessment and Site Investigation (PA/SI).

3. Individual lands and structures – Pueblo agrees to help EPA identify individual Pueblo citizens and their residences, and gain access to residences, yards, buildings, wells and other structures as necessary to take samples and investigate uranium contamination

### **III. MISCELLANEOUS PROVISIONS**

#### **A. Effective Date, Amendment and Termination**

This MOU becomes effective upon the signature of the Parties and is to remain in effect for a period of two (2) years. This MOU may be extended or modified at any time upon the mutual written consent of the parties. Either party may terminate its participation in this MOU at any time by providing written notice to the other party at least thirty (30) days in advance of the desired termination date.

#### **B. Notification**

Whenever, under the terms of this MOU, notice is to be given or written comments or other documents are to be sent by one Party to another, the notice or comments are to be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing.

For EPA:

Mr. Samuel Coleman, P.E.  
Division Director, Superfund (6SF)  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2735

For the Pueblo:

#### **C. Dispute Resolution**

The parties agree that disputes, if any, typically should be resolved in accordance with the Region 6 Elevation Process for EPA and Tribal Governments ("Elevation Protocol"), dated June 11, 2008, attached hereto and hereby incorporated by reference.

## **D. Limitations**

Each Party to this MOU has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, and nothing in this MOU waives or forecloses the exercise of any such rights, powers or remedies.

All commitments made by EPA in this MOU are subject to the availability of appropriated funds and the Agency's budget priorities. Nothing in this MOU, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligations. Further, this MOU does not constitute rulemaking by the EPA.

The provisions of this MOU neither constitute, nor should they be construed as, a covenant not to sue or a waiver of prosecutorial discretion concerning any matter. The Parties' participation in this MOU and the CERCLA process does not constitute a waiver of any sovereign immunity by the Pueblo or the United States.

The MOU is not intended to confer any benefits or impose any obligations on the public. The MOU does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any person against EPA or the Pueblo, their officers or employees, the Federal Government, or any other person. This MOU does not apply to any person outside the Federal Government or the Pueblo. The MOU does not provide any right to judicial review. The sole and exclusive remedy for any failure on the part of a party to carry out its intentions under this MOU will be the withdrawal from this MOU.

\_\_\_\_\_  
LAWRENCE STARFIELD  
ACTING REGIONAL ADMINISTRATOR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JOHN ANTONIO, SR.  
GOVERNOR, PUEBLO OF LAGUNA

\_\_\_\_\_  
DATE

### **Attachments:**

1. Region 6 Tribal Consultation Policy Statement
2. Memorandum on Reaffirmation of Region 6's Relationship with Tribal Governments, including the Region 6 Elevation Process for EPA and Tribal Governments ("Elevation Protocol")
3. Regional Policy on Sharing Information with States and Tribes

## REGION 6 TRIBAL CONSULTATION POLICY STATEMENT

Tribal consultation is the process of seeking, discussing, and considering the views of federally recognized tribal governments at the earliest time possible in EPA Region 6's decision-making process to the fullest extent feasible and permitted by law. Tribal consultation is more than providing information about what the agency is planning to do and allowing comment. Rather, it is respectful, timely and effective interactive communication that results in the open sharing of information, the full expression of Tribal and EPA views and the consideration of tribal perspectives in a decision making process that demonstrates respect for tribal self-governance and sovereignty. The goal of each tribal consultation shall be to reach mutually agreeable solutions.

Therefore, it shall be the policy of EPA Region 6 to provide a mechanism for consultation that affords tribal leadership access to the Agency's regional leadership. This is accomplished first through government-to-government communications by officials of appropriate authority, as determined by the Regional Administrator and the Tribal Chief/Chairman. The timeframe and manner of these communications should be negotiated between EPA and the Tribe(s), consistent with any national regulations and guidance. (Separate procedures would need to apply in cases of formal enforcement actions in which the tribe is a defendant.) In the case of disagreements, EPA and Tribal employees should follow the attached elevation protocol, which will ensure that issues are brought to senior officials for decision in a timely manner. Nothing in the elevation protocol would preclude direct communication by a Tribal Chief/Chairman with the Regional Administrator. In addition, where the Region is developing a significant new policy or decision affecting Tribes, or where the Tribal Chief/Chairman believes the issue so merits, EPA and the Tribe will engage in more formal consultation, involving direct face-to-face meetings at a senior level.

Understanding that each tribe is unique, tribal governments are not prevented from developing their own EPA/Tribal Consultation Policy, Protocol or Guidance and submit it for EPA review and concurrence.

June 11, 2008

**MEMORANDUM**

**SUBJECT:** Reaffirmation of Region 6's Relationship with Tribal Governments.

**FROM:** Regional Administrator

**TO:** All Region 6 Employees

The United States has a unique, legal relationship with Tribal governments. This relationship is governed by treaties, statutes, Executive Orders and court decisions. EPA has its own tribal policy that addresses and defines our relationship with our Tribal partners in protecting human health and the environment. This partnership has been built on mutual respect and the recognition of tribes as sovereigns.

The purpose of the memorandum is to reaffirm our regional commitment to a strong partnership with Tribal governments. As with any partner, we must continue to ensure the close involvement and consultation with Tribal governments in making decisions that affect their land or have tribal implications. In addition, and in the spirit of mutual respect, we will follow the tribes' communication and visitation protocols. There are 65 Tribes in our Region, and each may have a different protocol. We suggest that you contact the Office of Environmental Justice and Tribal Affairs (OEJTA) prior to making your initial visit to a tribal nation. We also invite you to take "Working Effectively with Tribal Governments" training which you can access online at [www.epa/dwoe/soel](http://www.epa/dwoe/soel).

Every EPA employee should reinforce our Agency's commitment to the government-to-government relationship between Federal and Tribal governments. We should also continue to recognize Tribal governments as sovereign entities with authority and responsibility for their populations and land. Please help us ensure that our daily interactions with Tribal partners reflect this commitment.

**Region 6 Elevation Process for EPA and Tribal Governments**

Pursuant to the federal trust responsibility and EPA's Indian Policy, Region 6 is committed to building cooperative partnerships with Tribes. As with any relationship, misunderstandings and disagreements may arise from time to time. EPA will seek to resolve issues in a timely manner with our tribal partners on a government-to-government basis. The following process is designed to effectively elevate issues through EPA and Tribal organizations in an effort to arrive at mutually agreeable solutions.

Elevation of an issue will typically follow this process:

1. An issue is raised by a tribal Environmental Staff or Director to the appropriate EPA Project Officer or program staff. If it cannot be resolved at this level within 15 days, then
2. The issue will be put in writing by the involved parties. EPA staff will elevate the issue to their supervisor(s) and management to seek a solution with Tribe's Environmental Director. If it cannot be resolved within 30 days, then
3. The issue will be formally elevated through EPA Senior Staff and senior tribal management, with final elevation to the Regional Administrator and the appropriate Tribal leader. Resolution should be accomplished within 30 days.

*Notes: (a) This elevation process is not applicable in cases of formal enforcement actions in which the tribe is a defendant.*

*(b) If an EPA program has an issue with a tribe that needs resolution, program staff should contact the Ombudsman for assistance in negotiating with tribal staff. If it remains unresolved after 30 days, the Division Director should work with the OEJTA Director to communicate directly with tribal leaders. Negotiations with tribes should incorporate respect for cultural protocols. These can be determined with the assistance of the Ombudsman, Associate Director for Tribal Affairs, and OEJTA Director.*



R6 Mailroom  
Sent by: Leticia Lane  
09/09/2004 01:46 PM

To:  
cc: (bcc: Paul Witthoef/R6/USEPA/US)  
Subject: AEM: Regional Policy on Sharing Information with States and Tribes

This is being sent as R6 All Employee Memo - Please do not reply to this mass mailing  
This memo and all Region 6 "All Employee Memos" may be viewed on the Region 6 Intranet

\*\*\*\*\*

NO HARD COPY TO FOLLOW

September 9, 2004

**MEMORANDUM**

**SUBJECT:** Regional Policy on Sharing Information with States and Tribes

**FROM:** Lawrence E. Starfield /s/ *Larry Starfield*  
Deputy Regional Administrator (6RA-D)

**TO:** All Region 6 EPA Employees

The Region frequently receives information which is of interest to our partner State or Tribal government environmental agencies. It is Region 6 policy not to require formal Freedom Of Information Act (FOIA) requests from our State and Tribal governments which seek environmental information. At the same time, when we release information to our partner agencies without a FOIA request, we should be careful to release only what is generally available to the public under FOIA.

For instance, information with privacy implications (names, home addresses, etc.) should not be released, either under FOIA or under this Region 6 policy. We should be mindful that any inadvertent release of internal deliberative materials or enforcement materials may be interpreted as a "waiver" of governmental privileges, thereby reducing our capacity to withhold such materials in the future.

Therefore, the main points to keep in mind are:

- We do not require formal FOIA requests from States or Tribes for publicly available documents, and we will handle such requests promptly, without charging a fee for searching and copying.
- We should only release the same open information which we would have released to the general public under FOIA.

Instruction on this policy will be added to the quarterly "FOIA Overview" training course offered by FOIA Officer Jerva Durham (ext. 6597) and one of our FOIA attorneys, Paul



Witthoeft (ext. 8057). Jerva and Paul are also the persons to contact for assistance when handling a State or Tribal request to ensure consistency with the principles of release under FOIA. Their alternates are Maryann Morales (ext. 6598) and attorney Robyn Moore-Johnson (ext. 8054).

I appreciate your help in advancing the partnership relationships with our States and Tribes. If you have any questions or comments concerning our policy on sharing information with States and Tribes, please feel free to email them to [R6Suggest@epa.gov](mailto:R6Suggest@epa.gov).

# LAGUNA CONTACTS

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*for Larry's opening*

**It is the Region 6 policy to provide, (in this case) Laguna Pueblo with a mechanism for consultation.**

**We hope this meeting initiates the consultation discussion with the Pueblo.**

**We want to hear from you about any concerns stemming from uranium mining affecting tribal health, the environment, and possible tribal interests.**

**EPA is better able to fulfill its responsibilities to protect human health and the environment if the Agency uses the consultation process to gain insight and knowledge from the tribal government on the uranium initiative.**

**The consultations may be informal....or more formal and involve face-to-face meetings with senior EPA officials.**

**My staff and I can work directly with the tribe to identify concerns.**

**The tribe may work with EPA to develop the consultation process or the tribe may develop and submit its own consultation policy or protocol for EPA concurrence.**

**The timeframe and manner of these consultations may be negotiated between the tribe and the EPA.**

**We are flexible. We believe there is opportunity for both an informal processes, for the day-to-day activities and project specifics, and more formally, on a consultation agreement.**

**In addition to meeting with you, I would also offer that my staff meet with your tribal members if you think that would be helpful, to present what we are doing and to hear first-hand their concerns. These meetings with the tribal members may be part of the consultation process, if you chose.**

Laguna Pueblo Consultation  
October 13, 2009

*for Sam's opening*

### **Presentations**

I am going to talk about three things: EPA's plans and schedule for its uranium initiative in the Grants Mineral Belt, to review the current and planned activities, and highlight Superfund priorities. Does that sound ok?

- We are collecting and compiling all Federal, State, and Tribal activities planned or underway for Uranium mining in the Grants Mineral Belt into a 5 year plan.
- We met with our Federal, State, and Tribal partners in April to discuss uranium concerns and to solicit information on activities. The Laguna Pueblo was invited to that meeting.
- We are scheduled to have a 5 year plan drafted by Spring of 2010 and ready to distribute to the public.
- In order to meet that schedule, we are holding a series of meetings with our partners and interested parties to determine specific concerns. We plan to meet with each of the tribes that may have interest in the New Mexico uranium mining initiative.
- After we begin our consultation with the tribe, we plan to schedule community meetings in the town of Marquez and the city of Grants to advise the communities of EPA's plans and to solicit concerns and information. We are scheduled to hold these meetings before Thanksgiving. The first meeting is scheduled for Oct 20 in Grants, NM.

**In addition to the five year plan, EPA has several other priorities:**

### **EPA Priorities**

1. Compile 5 year Plan for the Grants Mineral Belts to include all Federal, State, and Tribal activities.

2. Compile all available data from Federal, State, and Tribal information.

3. Implement PA/SIs to support enforcement and state/tribal concerns.

We have not performed any PA/SIs in or around the Pueblo yet, but we will work with you to outline a PASI for the Jack Pile Mine area.

4. Survey structures on non-Navajo and private lands. This would include the Laguna Pueblo.

I understand that both Paguate and Mesita may have residential structures built with waste rock.

Jon Rhinehart and Warren Zahner, both OSCs, have done some preliminary research and will talk about the activities and work planned to address structures built with the waste rock.

Laguna Pueblo  
October 7, 2009

Possible Items of Interest for Consultation

1. Data – How will EPA share and use the information collected from sampling events?
2. Cultural Issues – For example, the tribe did not want the flyovers to interfere with its festival events. (We resolved this concern already.)
3. Health concerns – Tribe said that a large number of members have diabetes. Tribe is concerned about health of members that worked in uranium mines.